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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,636	02/22/2002	Richard Thompson	BSI-498US	1919
7590 03/15/2005			EXAMINER	
RATNER & PRESTIA			BUI, VY Q	
One Westlakes, Berwyn, Suite 301			ART UNIT	
P.O. Box 980			PAPER NUMBER	
Valley Forge, PA 19482-0980			3731	

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

CPN

Office Action Summary	Application No. 10/081,636	Applicant(s) THOMPSON ET AL.	
	Examiner Vy Q. Bui	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/25/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-7, 11 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Burton et al.-5,078,720.

Burton-'720 (fig. 1) shows retrograde portion 6/10, anterograde portion comprising sheath 5, distal end 2, shaft 1, endo-prosthesis 7 and balloon 14, central lumen receiving endo-prosthesis 7 defined by retrograde portion 6/10 and anterograde portion as recited in the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 8-10, 12-13 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Burton et al.-5,078,720.

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As to claims 2 and 16, Burton-'720 discloses substantially every limitation in the claims, except for an annular lumen in the retrograde portion for fluid communication to balloon 14. However, it is quite within level of one of ordinary skill in the art at the time of the invention to provide an annular lumen for fluid communication to balloon 14 as this configuration is only a design choice among other common choices. For example, Leone et al-6,468,244 (Fig. 1-2) discloses annular lumen 30 for inflation of balloon 18. It is clearly that providing an annular inflation lumen is well known in the art as one suitable design. Another reference, Kokish-6,544,223 (Fig. 3c) shows an annular lumen for inflation a balloon.

As to claims 8-10, Burton-'720 discloses substantially every limitation in the claims, except for one or more radiopaque markers disposed at various locations for fluoroscopic monitoring of device deployment. It is well known in the art to provide one or more radiopaque markers for fluoroscopic monitoring of a device during deployment. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide one or more radiopaque markers for fluoroscopic monitoring of a device during deployment to the Burton device so as one can monitor the Burton device during deployment inside the body of a patient. For example, Leone et al-6,468,244 (Fig. 1-2) discloses proximal and distal radiopaque markers 44 for fluoroscopic monitoring of balloon 18 during deployment in side a patient's body.

As to claims 12-13, Burton-'720 discloses substantially every limitation in the claims, except for using the device with an endoprosthesis as a stent or a stent-graft or a filter. The Burton-'720 device comprises every structural limitations as recited in the claims and therefore is capable of doing the functions as recited in the claims.

Response to Amendment

The amendment filed on 12/27/2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Burton-'720 reference.

The languages as recited in independent claim 1 (... an inflatable balloon mounted radially outside the retrograde portion, the balloon positioned to anchor a proximal portion of the endoluminal device against the body lumen during deployment of the device) and in independent claim 16 (...a balloon located radially outward of the external wall at or near the retrograde portion distal end for anchoring the endoluminal device against the body lumen during deployment of the device from the device proximal end to the device distal end....) mainly recite an intended use of/method of using the device and do not provide any structural limitation to distinguish the present invention over the Burton-720 device. The Burton-'720 including every structural limitation as claimed, therefore, is capable of doing the same function as the device in the present invention.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period


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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 703-308-2158. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



03/10/2005

Vy Q. Bui
Primary Examiner
Art Unit 3731